

The Department has no statutory authority to waive the mandatory Electronic Funds Transfer requirements contained in Section 3 of the Retailers' Occupation Tax Act. See 35 ILCS 120/3. (This is a GIL).

October 19, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter received by our office on August 21, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Please consider this a request to reconsider the enclosed letter indicating that our client is subject to Electronic Funds Transfers (EFT) for sales tax purposes.

The Illinois Legislature recently passed a law whereby COMPANY is now considered a 'Construction Contractors' and not a retailer. Consequently, they do not charge their customers sales tax, but they are required to pay sales/use tax to their carpet suppliers. Enclosed please find copies of COMPANY's May and June 2000 sales tax returns which were timely filed.

I believe that the change in how the Department determines the tax treatment of the installation of carpet resulted in the change in the taxability of your client's business. See the enclosed copy of the Department's Informational Bulletin issued in May 2000 (FY 2000-18). This bulletin clarifies that carpet which is installed by using tacks, staples, or tacking strips will be treated in the same manner as carpet that is installed by gluing it down.

Public Act 91-541 became effective on August 13, 1999 and changed the threshold requirements for mandatory payments by use of electronic funds transfer (EFT) and mandatory quarter monthly payments.

QUARTER MONTHLY PAYMENTS

On and after October 1, 2000, if the taxpayer's average monthly tax liability to the Department under this Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act, excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of this Act,

was \$20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. 35 ILCS 120/3. Previously, the mandatory quarter monthly payment threshold was \$10,000 or more per month.

Please note that, on and after October 1, 2000, once applicable, the requirement of the making of quarter monthly payments to the Department by taxpayers having an average monthly tax liability of \$20,000 or more as determined in the manner provided above shall continue until such taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than \$19,000 or until such taxpayer's average monthly liability to the Department as computed for each calendar quarter of the 4 preceding complete calendar quarter period is less than \$20,000. However, if a taxpayer can show the Department that a substantial change in the taxpayer's business has occurred which causes the taxpayer to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below the \$20,000 threshold stated above, then such taxpayer may petition the Department for a change in such taxpayer's reporting status. The Department shall change such taxpayer's reporting status unless it finds that such change is seasonal in nature and not likely to be long term. 35 ILCS 120/3.

ELECTRONIC FUNDS TRANSFER

Beginning October 1, 2000, a taxpayer who has an annual tax liability of \$200,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "annual tax liability" shall be the sum of the taxpayer's liabilities under this Act (Retailers' Occupation Tax Act), and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year. 35 ILCS 120/3. The mandatory EFT requirement was previously \$50,000 or more per month.

The Department has no statutory authority to waive or delay the implementation of these statutory provisions. As described above, the statutory provisions regarding a substantial change in a taxpayer's business may be applicable to the determination of whether your client should be required to continue to make quarter monthly payments. You may want to write the Department's Sales Tax Processing Division and request that your client's reporting status for making quarter monthly payments be changed.

However, the statutory provisions regarding payments by electronic funds transfer do not contain similar authorization for the Department to vary from the specified amounts for mandatory participation.

The Department has no statutory authority to waive or delay the implementation of these statutory provisions. The filing status of your client's company will be reviewed next year. If the company's liability remains below the threshold, it will no longer be required make payments through the use of electronic funds transfer effective October 1, 2001.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.